

# Order

**Michigan Supreme Court  
Lansing, Michigan**

January 23, 2008

Clifford W. Taylor,  
Chief Justice

ADM File No. 2006-11

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendments of  
Rules 2.614, 7.101, 7.209, and  
7.302 of the Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 2.614, 7.101, 7.209, and 7.302 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The notices and agendas for public hearings are posted on the Court's website, [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its current form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.614 Stay of Proceedings to Enforce Judgment

(A)-(C)[Unchanged.]

(D) Stay on Appeal. Stay on appeal is governed by MCR 7.101(H), 7.209, and 7.302(G). If a party appeals a trial court's denial of the party's claim of governmental immunity, the party's appeal operates as an automatic stay of proceedings until the issue of the party's status is finally decided.

(E)-(G)[Unchanged.]

Rule 7.101 Procedure Generally [Appeals to Circuit Court]

(A)-(G)[Unchanged.]

(H) Stay of Proceedings.

(1) Civil Actions.

- (a) Unless otherwise provided by rule or ordered by the trial court, an execution may not issue and proceedings may not be taken to enforce an order or judgment until the expiration of the time for taking an appeal under subrule (B).
- (b) An appeal does not stay execution unless
  - (i) the appellant files a stay bond to the opposing party as provided by this rule or by law; ~~or~~
  - (ii) the appellant is exempted by law from filing a bond or is excused from filing a bond under MCL 600.2605 or MCR 3.604(L) and the trial court grants a stay on motion; or
  - (iii) a party appeals a trial court's denial of the party's claim of governmental immunity, and the appeal is pending.
- (c) The stay bond must be set by the trial court in an amount adequate to protect the opposing party. If the appeal is by a person against whom a money judgment has been entered, it must be not less than 1 1/4 times the amount of the judgment. The bond must:
  - (i) recite the names and designations of the parties and the judge in the trial court, identify the parties for whom and against whom judgment was entered, and state the amount recovered;
  - (ii) contain the conditions that the appellant
    - (A) will diligently prosecute the appeal to a decision and, if a judgment is rendered against him or her, will pay the amount of the judgment, including costs and interest;
    - (B) will pay the amount of the judgment, if any, rendered against him or her in the trial court, including costs and interest, if the appeal is dismissed;
    - (C) will pay any costs assessed against him or her in the circuit court; and

(D) will perform any other act prescribed in the statute authorizing appeal; and

(iii) be executed by the appellant with one or more sufficient sureties as required by MCR 3.604.

If the appeal is from a judgment for the possession of land, the bond must include the conditions provided in MCR 4.201(N)(4).

(d) Unless otherwise provided in this rule, the filing of a bond stays all further proceedings in the trial court under the order or judgment appealed from. If an execution has issued, it is suspended by giving notice of the bond to the officer holding the execution.

(2) Probate Proceedings.

(a) The probate court has continuing jurisdiction to decide other matters arising out of a proceeding in which an appeal is filed.

(b) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).

(3) Civil Infractions. An appeal bond and stay in a civil infraction proceeding is governed by MCR 4.101(G).

(4) Criminal Cases. Unless a bond pending appeal is filed with the trial court, a criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed. The granting of bond and the amount of it are within the discretion of the trial court, subject to the applicable laws and rules on bonds pending appeals in criminal cases.

(5) Request for Stay Filed in Circuit Court. If a request for a stay pending appeal is filed in the circuit court, the court may condition a stay on the filing of a new or higher bond than otherwise required by these rules with appropriate conditions and sureties satisfactory to the court.

(I)-(P) [Unchanged.]

Rule 7.209 Bond; Stay of Proceedings

(A) Effect of Appeal; Prerequisites.

- (1) Except for an automatic stay pursuant to MCR 2.614(D), an~~An~~ appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay proceedings in a case in which a party has appealed a trial court's denial of the party's claim of governmental immunity.
- (2) A motion for bond or for a stay pending appeal may not be filed in the Court of Appeals unless such a motion was decided by the trial court.
- (3) A motion for bond or a stay pending appeal filed in the Court of Appeals must include a copy of the trial court's opinion and order, and a copy of the transcript of the hearing on the motion in the trial court.

(B)-(D) [Unchanged.]

(E) Stay of Proceedings by Trial Court.

- (1) Except as otherwise provided by law or rule, the trial court may order a stay of proceedings, with or without a bond as justice requires.
  - (a) When the stay is sought before an appeal is filed and a bond is required, the party seeking the stay shall file a bond, with the party in whose favor the judgment or order was entered as the obligee, by which the party promises to
    - (i) perform and satisfy the judgment or order stayed if it is not set aside or reversed; and
    - (ii) prosecute to completion any appeal subsequently taken from the judgment or order stayed and perform and satisfy the judgment or order entered by the Court of Appeals or Supreme Court.
  - (b) If a stay is sought after an appeal is filed, any bond must meet the requirements set forth in subrule 7.209(F).
- (2) If a stay bond filed under this subrule substantially meets the requirements of subrule (F), it will be a sufficient bond to stay proceedings pending disposition of an appeal subsequently filed.

- (3) The stay order must conform to any condition expressly required by the statute authorizing review.
- (4) If a government party files a claim of appeal from an order described in MCR 7.202(6)(a)(v), the ~~trial court shall stay~~ proceedings regarding that party shall be stayed during the pendency of the appeal, unless the court of Appeals directs otherwise.

(F)-(I) [Unchanged.]

#### Rule 7.302 Application for Leave to Appeal

(A)-(G)[Unchanged.]

- (H) Stay of Proceedings. MCR 7.209 applies to appeals to the Supreme Court. When a stay bond has been filed on appeal to the Court of Appeals under MCR 7.209 or a stay has been entered or takes effect pursuant to MCR 7.209(E)(4), it operates to stay proceedings pending disposition of the appeal in the Supreme Court unless otherwise ordered by the Supreme Court or Court of Appeals.

Staff Comment: This proposal would impose an automatic stay in a case in which a party files a claim of appeal of a denial by the trial court of the party's claim of governmental immunity. Under this proposal, no order would be necessary for the stay to operate.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). All comments will be posted on the Court's website. When filing a comment, please refer to ADM File No. 2006-11.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 23, 2008

*Corbin R. Davis*  
Clerk